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9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF ARIZONA

11 United States of America,  
12 Plaintiff,  
13 v.  
14 Marcos Antonio Cruz,  
15 Defendant.

CR 11-02729-01-TUC-DCB (JM)  
PLEA AGREEMENT

17 The United States of America and the defendant, agree to the following disposition of  
18 this matter:

19 **PLEA**

20 The defendant agrees to plead guilty to Count Two of the Superseding Indictment  
21 charging the defendant with a violation of Title 21, United States Code, Section 846,  
22 Conspiracy to Possess with Intent to Distribute Marijuana, a felony.

23 **ELEMENTS OF THE CRIME**

24 The essential elements of Conspiracy to Possess with Intent to Distribute Marijuana are  
25 that:

26 (a) the defendant agreed with at least one other person to commit the crime of Possession  
27 with Intent to Distribute Marijuana as charged in the Indictment;  
28

(b) the defendant became a member of the conspiracy knowing that its object was the Possession of Marijuana with Intent to Distribute, in violation of Title 21, United States Code, Section 841(a)(1), and intending to accomplish said object.

As a sentencing factor, the government would be required to prove that the amount of marijuana involved exceeded 1,000 kilograms.

**TERMS**

The defendant understands the guilty plea is conditioned upon the following terms, stipulations, and requirements:

**1. Maximum Penalties:**

a. The defendant understands and agrees that the maximum penalty for the offense being pled to is a fine of \$10 million, a term of life imprisonment with a mandatory minimum term of ten (10) years, or both, and a term of between five (5) years and lifetime supervised release.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform Act of 1984, the court shall:

(1) Order defendant to make restitution to any victim of the offense unless, pursuant to Title 18, United States Code, Section 3663 and Section 5E1.1 of the Guidelines, the court determines that restitution would not be appropriate in this case;

(2) Order defendant to pay a fine, which may include the costs of probation, supervised release or incarceration, unless, pursuant to Title 18, United States Code, Section 3611 and Section 5E1.2(f) of the Guidelines, defendant establishes the applicability of the exceptions found therein;

c. Pursuant to Title 18, United States Code, Section 3013, the court is required to impose a special assessment on the defendant of \$100.00 per felony count. The special assessment is due at the time defendant enters the plea of guilty, but in no event shall it be paid later than the time of sentencing.

1 d. Pursuant to Title 21, United States Code, Section 862a, defendant will not be  
2 eligible for either assistance under programs funded under Part A of Title IV of the Social  
3 Security Act (Temporary Assistance for Needy Families) or benefits under the Food Stamp  
4 program. In addition, any benefits to defendant's family under these programs will be  
5 reduced.

6 e. Defendant recognizes that pleading guilty may have consequences with respect to  
7 his/her immigration status if defendant is not a citizen of the United States. Under federal  
8 law, a broad range of crimes are removable offenses, including the offense(s) to which  
9 defendant is pleading guilty. Removal and other immigration consequences are the subject  
10 of a separate proceeding, however, and defendant understands that no one, including  
11 defendant's attorney or the district court, can predict to a certainty the effect of defendant's  
12 conviction on defendant's immigration status. Defendant nevertheless affirms that he/she  
13 wants to plead guilty regardless of any immigration consequences that this plea may entail,  
14 even if the consequence is defendant's automatic removal from the United States.

15 **2. Agreement Regarding Sentencing:**

16 a. Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., and U.S.S.G. §§ 5K3.1 and 5H1.4,  
17 the government and the defendant stipulate and agree to a stipulated sentence of 180 months  
18 imprisonment. Either party may withdraw from the plea agreement if the defendant is not  
19 sentenced in accordance with this provision.

20 b. In exchange for the government agreeing to allowing the defendant to receive three  
21 points for acceptance of responsibility and the sentencing adjustments above, the defendant  
22 agrees to waive any appeal from the District Court's determination of the appropriate  
23 sentencing range and sentence imposed or habeas challenge to the sentence, as detailed in  
24 paragraph 6 below.

25 c. All remaining counts of the indictment and the superseding indictment will be  
26 dismissed at the time of sentencing, and the government agrees not allege the defendant's  
27 prior drug conviction, pursuant to 21 U.S.C. §851.

1 d. Defendant understands that the court is neither a party to nor bound by this  
2 agreement and specifically the court has complete discretion to impose the maximum  
3 sentence possible for the crime to which defendant has pled. Defendant further understands  
4 that if the court imposes a sentence greater than the maximum term agreed upon by the  
5 parties, defendant will be permitted to withdraw the guilty plea.

6 e. If the court, after reviewing the plea agreement, concludes that any provision is  
7 inappropriate, it may reject the plea agreement giving defendant, in accordance with Fed.  
8 R. Crim. P. 11(c)(5), an opportunity to withdraw the guilty plea.

9 f. This plea agreement is expressly conditioned upon the accuracy of defendant's  
10 criminal history as known by the government at the time of the plea. The discovery of any  
11 criminal history in addition to that known shall entitle the government to withdraw from this  
12 agreement.

13 g. This plea agreement is contingent upon the successful guilty pleas of all co-  
14 defendants in case # CR 11-02729-TUC-DCB (JM). If any of the co-defendants do not plead  
15 guilty in this case, the government reserves the right to withdraw from the plea agreement.

16 **3. Breach of the Agreement.**

17 If the defendant fails to comply with any obligation or promise pursuant to this  
18 agreement, the United States:

19 a. May, in its sole discretion, declare any provision of this agreement null and void  
20 in accordance with paragraph (6) below and the defendant understands that the defendant  
21 shall not be permitted to withdraw the plea of guilty made in connection with this agreement;

22 b. May prosecute the defendant for any offense known to the United States for which  
23 the defendant is responsible, and defendant waives any statute of limitations, Speedy Trial  
24 Act, and constitutional restrictions for bringing charges after the execution of this agreement;

25 c. May file an information alleging the defendant's prior drug conviction, pursuant  
26 to 21 U.S.C. §851; and

d. May argue for a maximum statutory sentence for the offenses to which defendant has pled guilty.

**4. Forfeiture, Civil and Administrative Proceedings**

a. Nothing in this agreement shall be construed to protect the defendant from civil forfeiture proceedings or prohibit the United States from proceeding with and/or initiating an action for civil forfeiture.

b. Defendant will identify all assets and identify the source of income used to obtain the assets. Defendant will identify all assets used to facilitate the commission of any crime charged in this indictment. Defendant will testify truthfully in any civil forfeiture proceeding.

c. Further, this agreement does not preclude the United States from instituting any civil or administrative proceedings as may be appropriate now or in the future.

**5. Plea Addendum.**

This written plea agreement, and any written addenda filed as attachments to this plea agreement, contain all the terms and conditions of the plea. Any additional agreements, if any such agreements exist, shall be recorded in a separate document and may be filed with the Court under seal. Accordingly, additional agreements, if any, may not be in the public record.

**6. Waiver of Defenses and Appeal Rights:**

The defendant waives any and all motions, defenses, probable cause determinations, and objections which the defendant could assert to the information or indictment, or to the petition to revoke, or to the Court's entry of judgment against the defendant and imposition of sentence upon the defendant providing the sentence is consistent with this agreement. The defendant further waives: (1) any right to appeal the Court's entry of judgment against defendant; (2) any right to appeal the imposition of sentence upon defendant under Title 18, United States Code, Section 3742 (sentence appeals); and (3) any right to collaterally attack defendant's conviction and sentence under Title 28, United States Code, Section 2255, or any

1 other collateral attack. The defendant acknowledges that this waiver shall result in the  
2 dismissal of any appeal or collateral attack the defendant might file challenging his/her  
3 conviction or sentence in this case. If the defendant files a notice of appeal or a habeas  
4 petition, notwithstanding this agreement, defendant agrees that this case shall, upon motion  
5 of the government, be remanded to the district court to determine whether defendant is in  
6 breach of this agreement and, if so, to permit the government to withdraw from the plea  
7 agreement.

8 **7. Perjury and Other False Statement Offenses and Other Offenses.**

9 Nothing in this agreement shall be construed to protect defendant in any way from  
10 prosecution for perjury, false declaration or false statement, or any other offense committed  
11 by defendant after the date of this agreement.

12 **8. Reinstitution of Prosecution:**

13 If defendant's guilty plea is rejected, withdrawn, vacated or reversed at any time, the  
14 United States will be free to prosecute defendant for all charges of which it has knowledge,  
15 and any charges that have been dismissed because of this plea agreement will be  
16 automatically reinstated. In such event, defendant waives any objections, motions or defenses  
17 based upon the Statute of Limitations, the Speedy Trial Act or constitutional restrictions in  
18 bringing of the later charges or proceedings. Defendant understands that any statements made  
19 at the time of defendant's change of plea or sentencing may be used against defendant in any  
20 subsequent hearing, trial or proceeding as permitted by Fed R. Crim. P. 11(f).

21 **9. Disclosure of Information to U.S. Probation Office.**

22 a. Defendant understands the United States' obligation to provide all information  
23 in its file regarding defendant to the United States Probation Office.

24 b. The defendant will cooperate fully with the United States Probation Office. Such  
25 cooperation will include truthful statements in response to any questions posed by the  
26 Probation Department, including, but not limited to:  
27  
28



1 (1) All criminal history information, i.e., all criminal convictions as defined  
2 under the Sentencing Guidelines.

3 (2) All financial information, e.g., present financial assets or liabilities that relate  
4 to the ability of the defendant to pay a fine or restitution.

5 (3) All history of drug abuse which would warrant a treatment condition as part  
6 of sentencing.

7 (4) All history of mental illness or conditions which would warrant a treatment  
8 condition as a part of sentencing.

9 **FACTUAL BASIS**

10 I agree that the following facts accurately describe my conduct in connection with the  
11 offense to which I am pleading guilty; and, that if this matter were to proceed to trial, the  
12 government could prove the elements of the offense beyond a reasonable doubt based on the  
13 following facts:

14 During the time period of December 1, 2010 through July 31, 2011, **Marcos**  
15 **Antonio Cruz** agreed with and assisted co-defendants Martin Servando Cruz a/k/a  
16 Primo, Angel Alberto Rodriguez, a/k/a Coki, Aaron Vidrio Martinez, a/k/a  
17 Tartamudo and other persons, named and unnamed in the Indictment, to commit  
the offense of possession with the intent to distribute more than 1000 kilograms of  
marijuana. Specifically, the group agreed to purchase and serve as the sources of  
supply, in the distribution of more than 1000 kilograms of marijuana to various  
buyers.

18 In furtherance of this conspiracy, Martin Servando Cruz a/k/a Primo attempted  
19 to purchase approximately 1000 pounds of marijuana from a supplier in a deal  
brokered by **Marcos Antonio Cruz** in February 2011. Martin Servando Cruz a/k/a  
20 Primo received and inspected a sample bale of marijuana as part of that purchase.  
21 The purchase failed to finalize when a disagreement arose over whether the  
supplier would allow one of Martin Cruz's associates to take possession of the load  
vehicle before the transaction was complete.

22 In furtherance of this conspiracy, **Marcos Antonio Cruz** met with the co-  
23 conspirators at his hospital room in Tucson in March, 2011, and brokered a deal  
where the co-conspirators agreed to purchase approximately 1500 pounds of  
24 marijuana from a supplier in the Tucson area. The marijuana involved was then to  
be delivered by Julio Chiquete. Before the transaction could be finalized, the load  
25 vehicle, containing approximately one-half of the proposed 1500-pounds  
transaction, was stopped by law enforcement.  
26  
27  
28

1 Over the course of the conspiracy, the co-conspirators had agreed to purchase  
2 more than 1000 kilograms of marijuana to be sold to others buyers from Tucson  
3 and elsewhere.

4 **DEFENDANT'S APPROVAL AND ACCEPTANCE**

5 I have read each of the provisions of the entire plea agreement with the assistance of  
6 counsel and understand its provisions.

7 I have discussed the case and my constitutional and other rights with my attorney. I  
8 understand that by entering my plea of guilty I will be giving up my rights to plead not guilty,  
9 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to  
10 present evidence in my defense, to remain silent and refuse to be a witness against myself by  
11 asserting my privilege against self-incrimination -- all with the assistance of counsel -- and  
12 to be presumed innocent until proven guilty beyond a reasonable doubt.

13 I agree to enter my guilty plea as indicated above on the terms and conditions set forth  
14 in this agreement.

15 I have been advised by my attorney of the nature of the charges to which I am entering  
16 my guilty plea. I have further been advised by my attorney of the nature and range of the  
17 possible sentence and that my ultimate sentence will be determined according to the  
18 guidelines promulgated pursuant to the Sentencing Reform Act of 1984. I understand that  
19 the Guideline Range referred to herein or discussed with my attorney is not binding on the  
20 court and is merely an estimate. I further understand that under certain limited circumstances  
21 the court may depart upward or downward from the calculated guideline range.

22 My guilty plea is not the result of force, threats, assurances or promises other than the  
23 promises contained in this agreement. I agree to the provisions of this agreement as a  
24 voluntary act on my part, rather than at the direction of or because of the recommendation  
25 of any other person, and I agree to be bound according to its provisions.

26 I fully understand that, if I am granted probation or placed on supervised release by  
27 the court, the terms and conditions of such probation/supervised release are subject to  
28



1 modification at any time.

2 I further understand that, if I violate any of the conditions of my probation/supervised  
3 release, my probation/supervised release may be revoked and upon such revocation,  
4 notwithstanding any other provision of this agreement, I may be required to serve a term of  
5 imprisonment or my sentence may otherwise be altered.

6 I agree that this written plea agreement contains all the terms and conditions of my  
7 plea and that promises made by anyone (including my attorney), and specifically any  
8 predictions as to the guideline range applicable, that are not contained within this written  
9 plea agreement are without force and effect and are null and void.

10 I am satisfied that my defense attorney has represented me in a competent manner.

11 I am fully capable of understanding the terms and conditions of this plea agreement.  
12 I am not now on or under the influence of any drug, medication, liquor, or other intoxicant  
13 or depressant, which would impair my ability to fully understand the terms and conditions  
14 of this plea agreement.

15  
16 5/11/12  
Date

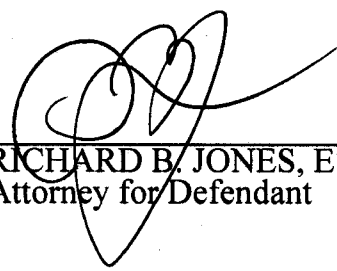
17   
MARCOS ANTONIO CRUZ  
Defendant

18 **DEFENSE ATTORNEY'S APPROVAL**

19 I have discussed this case and the plea agreement with my client, in detail and have  
20 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the  
21 constitutional and other rights of an accused, the factual basis for and the nature of the  
22 offense to which the guilty plea will be entered, possible defenses, and the consequences of  
23 the guilty plea including the maximum statutory sentence possible. I have further discussed  
24 the sentencing guideline concept with the defendant. No assurances, promises, or rep-  
25 resentations have been given to me or to the defendant by the United States or by any of its  
26 representatives which are not contained in this written agreement.  
27  
28

1 I concur in the entry of the plea as indicated above and on the terms and conditions  
2 set forth in this agreement as in the best interests of my client. I agree to make a bona fide  
3 effort to ensure that the guilty plea is entered in accordance with all the requirements of  
4 Fed. R. Crim. P. 11.

5  
6 5/11/12  
Date

  
RICHARD B. JONES, ESQ.  
Attorney for Defendant

8  
9 **UNITED STATES' APPROVAL**

10 I have reviewed this matter and the plea agreement. I agree on behalf of the United States  
11 that the terms and conditions set forth are appropriate and are in the best interests of justice.

12 ANN BIRMINGHAM SCHEEL  
13 Acting United States Attorney  
District of Arizona

14  
15 5/11/12  
Date

  
for DAVID P. FLANNIGAN  
Assistant U.S. Attorney